

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

UNITED STATES OF AMERICA

v.

CRIMINAL CASE NO.
BEL-07-295

SHERMAN KEMP,

Defendant

_____ /

(Sentencing)
Friday, October 10, 2008
Baltimore, Maryland

Before: Honorable Benson Everett Legg, Judge

Appearances:

On Behalf of the Government:
Charles J. Peters, Esquire

On Behalf of the Defendant:
David R. Solomon, Esquire

Also Present: Lisa Spinnicchio,
Probation Officer

Reported by:
Mary M. Zajac, RPR
Room 5515, U.S. Courthouse
101 West Lombard Street
Baltimore, Maryland 21201

1 (Proceedings at 10:30 a.m.)

2 THE COURT: Mr. Peters, if you would call the case,
3 please.

4 MR. PETERS: Yes. Good morning, Your Honor. Charles
5 Peter on behalf of the government, calling the matter of United
6 States versus Sherman Kemp, which is Case Number 07-0295. Your
7 Honor, here for sentencing. And to my right is Special Agent
8 Doug Ellington with the DEA.

9 THE COURT: And good morning to you and to Special
10 Agent Ellington. Mr. Solomon, good morning to you, sir.

11 MR. SOLOMON: Good morning, Your Honor.

12 THE COURT: And good morning to you, Mr. Kemp.

13 THE DEFENDANT: Good morning.

14 THE COURT: Please be seated. I thank Ms. Spinnicchio
15 for preparing the Presentence Report. And she is here and ready
16 to answer any questions about it.

17 I wanted to review the calculations with counsel.
18 Because of the number of counts of conviction, the computation is
19 somewhat complicated.

20 To review the bidding, Mr. Kemp pled guilty to Count
21 One, conspiracy to distribute over five kilograms of cocaine. He
22 pled guilty to Count Two, possession of a firearm in furtherance
23 of a drug trafficking crime. He pled guilty to Count Three,
24 felon in possession of a firearm. And finally, Mr. Kemp pled
25 guilty to Count Four, possession with intent to distribute over

1 500 grams of cocaine.

2 There is a statutory minimum mandatory sentence under
3 Count One of 120 months. So that is the minimum sentence that
4 could be imposed under Count One.

5 There is a minimum -- count four is a -- correct me if
6 I'm incorrect. Count Four provides for a minimum mandatory
7 sentence of 60 months to run consecutively to Counts One, Two,
8 and Three. Is that correct or -- no, I'm getting myself confused
9 here.

10 MR. PETERS: That's Count Two, Your Honor.

11 MR. SOLOMON: Count Two.

12 THE COURT: Count Two is the sentence that has a 60
13 months consecutive sentence to all other counts.

14 MR. PETERS: That's correct, Your Honor.

15 MR. SOLOMON: That's our understanding as well.

16 THE COURT: And is Count Three also a consecutive
17 sentence?

18 MR. PETERS: No, Your Honor.

19 THE COURT: No. Good. So Count Two is the only
20 consecutive sentence. Count -- Count Three is not a consecutive
21 sentence. And Count Four is a concurrent, is a sentence that is
22 not required to be run concurrently.

23 So if we look at the counts of conviction and then
24 computing the total overall sentence, Count One carries a
25 statutory minimum mandatory of 120, Count Two carries a 60 month

1 consecutive sentence, so that the minimum sentence that I can
2 impose is 180 months.

3 Mr. Peters, is that correct, sir?

4 MR. PETERS: That's correct, Your Honor.

5 THE COURT: And Mr. Solomon, is that correct?

6 MR. SOLOMON: That is correct.

7 THE COURT: Good. Thank you. In completing the
8 Judgment and Committal Order, I am required to state a sentence
9 on each count. And I know what to do on Count One. I know what
10 to do on Count Two. But what the guideline range if they were
11 considered separately for Counts Three and Count Four, and does
12 it matter?

13 There's a recommendation from the Probation Office of a
14 sentence on Three and Four that is less than, certainly, which
15 must, as it must be, certainly less than the statutory maximum.
16 But what is the guideline range on Count Three and Count Four,
17 Ms. Spinnicchio?

18 MS. SPINNICCHIO: Yes, Your Honor. If I could just
19 have one minute, Your Honor.

20 THE COURT: Take your time.

21 MS. SPINNICCHIO: The count -- I'm sorry, Your Honor.
22 Is it Count Two and Three?

23 THE COURT: Count Three and Four.

24 MS. SPINNICCHIO: Three. Count Three would be the 87
25 to 108 months.

1 THE COURT: Good. And Count Four?

2 MS. SPINNICCHIO: Count Four would be 60 months, would
3 be the minimum term. So it would jump to, it would be 87 months
4 to 108.

5 THE COURT: Good. Thank you.

6 MS. SPINNICCHIO: You're welcome.

7 THE COURT: So if we then review, Count One carries a
8 minimum mandatory of 120 months. Count Two carries a flat
9 sentence of 60 months, which must run consecutively to all other
10 counts. Counts Three and Four each carry a guideline range of 87
11 to 108 months. And it is within the discretion of the Court to
12 determine whether those sentences under Count Three and Count
13 Four are either concurrent or consecutive.

14 In this case, Mr. Kemp has a Criminal History Category
15 of Roman Numeral I.

16 So with those findings, I am prepared to accept the
17 calculations in the Presentence Report. Mr. Peters, is there any
18 objection to my doing so?

19 MR. PETERS: No, Your Honor.

20 THE COURT: Thank you. Mr. Solomon?

21 MR. SOLOMON: No, Your Honor.

22 THE COURT: Thank you. Counsel, as you're all well
23 aware and as I know Mr. Solomon has carefully explained to Mr.
24 Kemp, the guidelines are no longer mandatory but are merely
25 advisory. The sentencing or the guidelines sentence is a jumping

1 off point. It is a starting point in the analysis. It is a
2 benchmark, as it were.

3 But the final sentence is to be determined under the
4 overarching sentencing statute, which is 18 USC Section 3553(a).
5 The judge is to weigh and assess the factors in Section 3553(a)
6 to determine the appropriate sentence. Among those factors, or
7 three of those factors require the judge to take into
8 consideration the guidelines sentence.

9 First, the judge is admonished specifically to take
10 into consideration the guidelines sentence. Second, the judge is
11 admonished to avoid any unwarranted sentencing disparities. And
12 finally, the Court is required to take into consideration any
13 policy statements set out in the, in the sentencing guidelines.

14 Good. With that having been said, I now wish to call
15 on Mr. Peters, if you would, to give me the government's view as
16 to the appropriate sentence to reach in this case.

17 MR. PETERS: Your Honor, I think that, hopefully, this
18 is relatively simple, Your Honor. The government would recommend
19 the mandatory minimum, which would be 180 months, Your Honor.

20 THE COURT: Good. Thank you. Mr. Solomon, I'd be
21 happy to hear from you on behalf of Mr. Kemp.

22 MR. SOLOMON: Your Honor, I'm going to remain extremely
23 brief because this was an agreement that we had with the
24 government. The government had recommended previously at the
25 time of the entry at rearraignment that it would recommend a

1 sentence of 180 months. I think it's more than satisfactory
2 under the circumstances.

3 The guideline range reflects the seriousness of the
4 charges. I think the Presentence Report also reflects Mr. Kemp's
5 fairly minimal exposure to the criminal justice system up until
6 this point. And I believe that a sentence of 180 months is
7 adequate under the circumstances. And with that, I'll simply
8 submit.

9 THE COURT: Thank you, Mr. Solomon. Mr. Solomon, I'd
10 be happy to hear from Mr. Kemp if he wishes to allocute but, of
11 course, he's certainly not required to do so.

12 MR. SOLOMON: We will submit, Your Honor.

13 THE COURT: Thank you.

14 I am prepared to take in, to accept the sentence of 180
15 months in this case as jointly recommended by the government and
16 by Mr. Solomon to behalf of Mr. Kemp. 180 months is the minimum
17 sentence that can be imposed in this case.

18 In my view, a sentence of 180 months satisfies the
19 requirements of Section 3553(a). This is a very serious drug
20 trafficking offense because of the systematic nature in which it
21 was carried out and because of Mr. Kemp's role as a leader in
22 carrying it out.

23 Nevertheless, a 180 months sentence is a very severe
24 sentence indeed and certainly satisfies the overall requirement
25 to impose a sentence that reflects the nature and circumstances

1 of the offense. So I have no hesitancy in accepting a 180 month
2 sentence.

3 I also note that Mr. Kemp, as Mr. Solomon has pointed
4 out, has a Criminal History Category One and does not have a
5 lengthy criminal history, as do many of the individuals who come
6 here to court.

7 So that the sentence will be 120 months on Count One,
8 60 months on Count Two consecutive to all other counts. The
9 sentence will be 87 months on Count Three. And the sentence will
10 be 87 months on Count Four.

11 Now, with respect to the payment of a fine. The
12 Presentence Report has concluded that Mr. Kemp does not have the
13 financial wherewithal to pay a fine and that is my view, also,
14 and I so find. And if there is any family money, it should be
15 devoted toward the maintenance of Mr. Kemp's children rather than
16 the payment of a fine.

17 In terms of supervised release, supervised release will
18 be five years on Count One, five years on Count Two, three years
19 on Count Three, and four years on Count Four. The terms of
20 supervised release shall all be -- well, I don't think I need to
21 make a finding as to whether they're consecutive or concurrent.
22 The overall effect will be that Mr. Kemp will serve five years of
23 supervised release.

24 The supervised release will be accomplished under the
25 standard conditions, with a special condition. And the special

1 condition is that Mr. Kemp shall satisfactorily participate in a
2 drug treatment program, which can include alcohol, approved by
3 the probation officer, for substance and/or alcohol abuse. And
4 the program may include evaluation, counseling, and testing as
5 considered necessary by the Probation Office.

6 I am required to do so and hereby impose a special
7 assessment of \$100 per count, for a total of \$400.

8 Mr. Solomon, is there anything that the defense would
9 have me do by way of recommendations to the Bureau of Prisons,
10 sir?

11 MR. SOLOMON: Yes, Your Honor. We're asking that the
12 Court recommend that sentence be served in Fort Dix to the
13 extent, of course, that that's possible.

14 THE COURT: Good. I'm happy to recommend to the Bureau
15 of Prisons, if Mr. Kemp means their criteria, that he be
16 sentenced at Fort Dix. And I know Mr. Solomon has carefully
17 explained to Mr. Kemp that the Court has no authority to require
18 the Bureau of Prisons to place a defendant in any facility. But
19 I'm hopeful that they will accede to the recommendation which
20 obviously is satisfactory to Mr. Kemp and also to his family,
21 that would like to visit him.

22 And I thank Mr. Kemp's family and friend for coming to
23 watch the sentencing proceeding. It's a very tragic thing that
24 many times, at a sentencing, particularly the young men, most of
25 our defendants are young men, will come, and without anybody to

1 support them. And it's good to know that Mr. Kemp does have this
2 family network of support, which bodes well for his future when
3 he is eventually released.

4 Mr. Peters, is there anything more that we need to do
5 this morning?

6 MR. PETERS: No, Your Honor. Not from the government.

7 THE COURT: Mr. Solomon?

8 MR. SOLOMON: Your Honor, the only thing Mr. Kemp's
9 asked me to confirm, and it's confirmed by statute, but he wants
10 to be clear that Counts Three and Four, of course, run
11 concurrently with the sentence imposed in Count One and Two.

12 THE COURT: Yes. Absolutely. Count One is 120 months.
13 Count Two is a consecutive 60 that runs consecutively to all, to
14 Counts One, Three and Four. Count Three runs concurrently to the
15 other counts. And Count Four runs concurrently to the other
16 counts. So that the total will be 180 months.

17 Good. Thank you.

18 (Conclusion of Proceedings at 10:46 a.m.)
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REPORTER'S CERTIFICATE

I, Mary M. Zajac, do hereby certify that I recorded stenographically the proceedings in the matter of USA v. Sherman Kemp, Case Number(s) BEL-07-295, on October 10, 2008.

I further certify that the foregoing pages constitute the official transcript of proceedings as transcribed by me to the within matter in a complete and accurate manner.

In Witness Whereof, I have hereunto affixed my signature this ____ day of _____, 2009.

Mary M. Zajac,
Official Court Reporter

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